

**Committee on Government Reform**  
**Minority Views on**  
**H.R. 2432, Paperwork and Regulatory Improvements Act of 2003**  
**May 14, 2004**

H.R. 2432 is portrayed by its sponsors as an attempt to improve federal regulations and reduce red-tape and paperwork. Unfortunately, the substance of this bill and the timing of its consideration make clear it is more public relations than public policy. This bill was rushed through the Committee without a Subcommittee markup. It will be featured as part of a partisan effort, entitled the “Hire Our Workers” plan, which highlights measures claimed to increase jobs and revive the economy. H.R. 2432 would weaken, rather than improve, the process of developing federal regulations, and it does nothing to stem the sharp rise in paperwork burden that has occurred since President Bush took office. This bill also fails to address real current problems in federal regulation, such as the pressure on agencies to misuse or ignore science for political ends. As such, H.R. 2432 will have no positive effect on employment or the economy.

During full Committee markup, we proposed amendments to H.R. 2432 to better align the bill with its intended purposes. An amendment by Rep. Henry A. Waxman would have established an independent commission on politicization of science in the regulatory process. An amendment by Rep. John F. Tierney would have enhanced transparency in the rule-making process by requiring comments and other communications from the White House Office of Management and Budget (OMB) to be made public. Both of these measures would have significantly enhanced the federal regulatory process and the quality of the regulations issued. Democratic members offered other amendments that would have corrected or ameliorated some of the flaws in the bill discussed below. This included an amendment by Rep. Dennis Kucinich that would have changed the provision in the bill permanently requiring the General Accounting Office (GAO) to respond to requests from Congress to evaluate economically significant agency rules to a three-year pilot project. All of the Democratic members’ amendments were rejected.

**Regulatory Budgets**

Section 6(c) of H.R. 2432 requires targeted agencies to participate in a study on regulatory budgeting. This requirement is ambiguous and the concept is misguided. H.R. 2432 does not define “regulatory budget” and it is unclear what agencies participating in the “study” would be required to do. As described by Subcommittee Chairman Ose and witnesses in prior hearings, a regulatory budget is actually a “regulatory cap,” which limits the total costs that an agency’s combined regulations can impose on the public. This is a deeply flawed concept, which should not be pursued.

A budget ensures that spending does not exceed income. However, in the context of regulations to enhance public welfare there is no equivalent to income, so any numeric cap set on regulatory costs is inherently arbitrary. A regulatory budget also by definition does not take benefits into account. The cap on regulations would be based solely on the costs of the regulations, not on their net benefits. Once an agency reached its cost cap, it would not be allowed to issue further regulations, even if the benefits of each regulation far exceeded the costs. Moreover, the cost estimates for regulations that would be used for a regulatory budget

are inherently inaccurate and generally biased upward. The cost estimates are based on prospective projections of regulatory costs, with no validation after the regulation has been implemented.

We believe resources should be directed toward increasing the transparency and integrity of the regulatory process rather than studying how to limit public protections.

### **Agency Cost Benefit Submissions to OMB**

Section 6(a) of H.R. 2432 requires each agency annually to submit to OMB “the total annual costs and benefits of Federal rules and paperwork, to the extent feasible” for the entire agency and each agency program. This requirement significantly expands the universe of rules for which agencies must submit cost and benefits estimates to OMB. Currently, agencies must submit such estimates to OMB only for “significant regulatory actions,” which are generally those that impose annual costs of \$100 million or more. Agencies should not be required to conduct any additional analysis beyond what is currently required. Majority staff has informed us that this provision is not intended to require the agencies to conduct any additional analyses beyond what they would already prepare.

In addition, because cost-benefit estimates have so many uncertainties, limitations, and flaws, expanding the use of these estimates will not add value or improve the quality of decision-making in the regulatory process. It also would do nothing to further the fundamental goals of our system of laws and regulations, such as protecting public health and the environment.

### **Submission of Regulatory Accounting Report as Part of the Budget**

Section 6(b) of H.R. 2432 requires OMB to submit its annual regulatory accounting report as part of the President’s budget. OMB’s regulatory accounting report is not a budget document and therefore it does not make sense to require this document to be included in the President’s budget. Moreover, OMB has expressed concerns this could conflict with the requirement to submit the report to public comment, interagency reviews, and peer reviews.

OMB’s Office of Information and Regulatory Affairs (OIRA) Administrator John Graham expressed OMB’s opposition to this provision in a March 26, 2004, letter to Subcommittee Chairman Doug Ose. Dr. Graham stated:

[U]nder existing law, the draft cost-benefit report that OMB issues in February, with the Budget, is subject to public comment, interagency review, and peer review. Then, in response to comment and reviews OMB receives, OMB revises the report and issues the final version of the report later in the year. If the cost-benefit report were made “a part of” the President’s Budget, we have concerns about how the public comment and review procedures would work and how they could be incorporated into the development of the President’s Budget.

OMB's regulatory accounting report must continue to be subject to public review and comment. Majority staff has informed minority staff that this provision is not intended to preclude OMB from providing an opportunity for public review and comment on a draft report. The majority staff believes that this section requires the draft regulatory accounting report be used at a time well before the issuance of the President's Budget ensuring that the report would be subject to public comment, interagency review, and peer review.

### **Requirement on GAO to Re-Evaluate Agency Cost Benefit Analyses**

Section 5 of H.R. 2432 unwisely makes permanent the pilot program created in the Truth in Regulating Act (TIRA) of 2000. TIRA established a three-year pilot program in which GAO, if asked by a chairman or ranking minority member, would report on economically significant proposed and final rules within a mandated timeframe. That law states that the pilot would only go forward if GAO received TIRA-earmarked appropriations and that the pilot would be reviewed for effectiveness to determine permanency. To this date, Congress has failed to provide GAO with funding for TIRA.

GAO currently does not have the resources to comply with section five, and more troubling, cannot accept all of its current congressional requests. In fact, GAO is in the process of revising its congressional protocols and is considering prohibiting individual member requests and taking on work only from committees. As it is, member requests are at the bottom of the priority chain. GAO should be taking on member requests and members are not requesting TIRA reviews. GAO Comptroller General Walker, in a letter sent yesterday, states, "if Congress wants TIRA to continue, we believe it should do so as a pilot project rather than as permanent authority." We agree; TIRA should not be made permanent until we see if it is worthwhile.

### **Findings**

H.R. 2432 cites in its findings an estimate for the paperwork burden for fiscal year 2001, as calculated by OIRA in 2002. Rep. Waxman offered an amendment to supplement this information by including OIRA's paperwork burden estimate for fiscal year 2002, and GAO's estimate for fiscal year 2003. These estimates reveal that the paperwork burden increase for fiscal year 2002 was a record 570 million hours. They also show that the annual paperwork burden for fiscal year 2003 rose by another 72 million hours, excluding adjustments to paperwork burden estimates. Overall, since fiscal year 2000, OIRA's figures show that the paperwork burden has increased by 700 million hours.

As the bill is intended to address the paperwork burdens in place today, it is appropriate that the findings refer to the most recent estimates. To the extent that the Committee is concerned about ongoing increases in paperwork burden, information on recent trends is critical context.


The findings in H.R. 2432 also cite to an estimate of the total costs incurred annually in the United States to comply with federal regulations. However, this estimate, and the study that produced it, has been strongly critiqued. For example, in testimony before the Committee last

July, Dr. John Graham, Administrator of OIRA, made the following statement regarding this estimate:


The estimate . . . is based on a previous estimate by Hopkins done in 1995, which itself was based on summary estimates done in 1991 and earlier, as far back as the 1970s. The underlying studies were mainly done by academics using a variety of techniques, some peer reviewed and some not. Most importantly, they were based on data collected ten, twenty, and even thirty years ago. Much has changed in those years and those estimates may no longer be sufficiently accurate or appropriate for an official accounting statement. Moreover, the cost estimates used in these aggregate estimates combine diverse types of regulations, including financial, communications, and environmental, some of which impose real costs and others that cause mainly transfers of income from one group to another. Information by agency and by program is spotty and benefit information is nonexistent. These estimates might not pass OMB's information quality guidelines. In particular, many of the studies they relied upon for these aggregate estimates are not sufficiently transparent about the data and methods to facilitate the reproducibility of the information by qualified third parties.

We do not believe that a figure so discredited should be cited in legislation or used as the basis for Congress' decision making.


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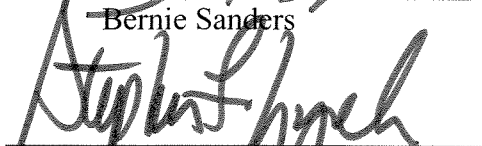
  
Chris Van Hollen

  
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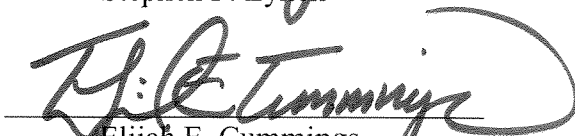
  
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